

Public Hearing – March 5, 2020

Joint Hearing – Commerce and Environment Committees

Testimony Submitted by Commissioner Katie S. Dykes and Commissioner David Lehman

**Senate Bill No. 281 – *An Act Concerning Various Revisions to the Property Transfer Law***

**Senate Bill No. 293 – *An Act Establishing a Release-Based Property Remediation Program***

Thank you for the opportunity to present testimony regarding Senate Bill No. 281 – An Act Concerning Various Revisions to the Property Transfer Law and Senate Bill No. 293 – An Act Establishing a Release-Based Property Remediation Program. Senate Bill No. 281 includes changes to Connecticut’s Property Transfer Act (the “Transfer Act”) stemming from a collaborative Transfer Act working group process convened pursuant to Public Act No. 19-75 and proposes language establishing a release-based cleanup program. Senate Bill No. 293 includes the same language on establishing a release-based cleanup program (the “Bills”).

The Department of Energy and Environmental Protection (DEEP) and the Department of Economic and Community Development (DECD) support these Bills, because they will collectively implement consensus changes that will immediately streamline the Transfer Act, while transitioning Connecticut’s remediation framework to a release-based framework. The Departments applaud the Chairs of both Committees for convening stakeholders and advancing changes to the Transfer Act. We also appreciate the willingness of the co-chairs of both Committees to raise legislation to transition Connecticut to a release-based cleanup program. This new approach will remove obstacles to real estate transactions, support economic competitiveness, expedite cleanups, and better protect human health and the environment by implementing a remediation framework similar to that used in 48 other states.

With the adoption of the Transfer Act in 1985, Connecticut was an early leader in establishing a regulatory framework for polluted properties. The Transfer Act designates certain real properties and businesses as “establishments.” The Transfer Act requires investigation and remediation of contamination when these establishments are “transferred.” Any remediation of sites covered by the Transfer Act must meet DEEP’s Remediation Standards Regulations (“RSRs”), §§ 22a-133k-1 through 22a-133k-3, inclusive.

In the last legislative session, Public Act No. 19-75 created new exemptions which reduce the number of properties subject to the Transfer Act, and created a working group to develop recommendations regarding further potential legislative changes to the Transfer Act. The working group consisted of members of the legislature, the Commissioners of Energy and Environmental Protection and Economic and Community Development, and representatives of groups of professionals who work with properties subject to the Transfer Act: environmental attorneys; commercial realtors; and licensed environmental professionals.

The Departments applaud the chairs of both committees for their leadership of the Transfer Act working group process, and the consensus-based improvements to the Act that are reflected in S.B. 281. Since the last meeting of the Transfer Act working group, the Departments continued to work with members of the working group to refine certain concepts, and based on future consensus, anticipates that further clarifying language will be offered shortly.

At the same time, the Departments appreciates both Committees for raising legislation that will sunset the Transfer Act and transition the state to a release-based cleanup framework. The Transfer Act has achieved limited success as a statewide cleanup program. Only about a quarter of the properties that have entered the Transfer Act program since 1985 have completed site cleanups. Connecticut is one of only two states that use a Transfer Act framework, while 48 other states have adopted a release-based system. At its most basic, the Transfer Act imposes investigation and cleanup obligations only on certain properties, while exempting others from oversight. This regulatory “distinction” deters investment and slows down commercial transactions. It is difficult to further address these inequities without compromising environmental outcomes. The Transfer Act focuses DEEP’s limited oversight resources on sites that may not pose the highest risk to human health and the environment.

By moving to a release-based model common in other states, Connecticut can leverage the proven approaches in other states like Massachusetts and achieve better outcomes for economic development and the environment. Regulatory consistency will make Connecticut more competitive with other markets and reduce compliance costs that slow down transactions, while removing inequities in the treatment of establishment vs. non-establishment sites. Moving to a release-based program will support more consistent, flexible cleanup standards being applied across all sites, not just those defined as “establishments,” and will enable DEEP to focus its regulatory oversight on the cleanup of highest risk contamination.

What will change under a release-based regime? The Departments envision several positive changes. The requirement to consider and address environmental contamination is separate from the transfer of real property. Under the Transfer Act, owners of “establishments” are required to perform investigations and clean up contamination. The actual contamination on these “establishment” properties may or may not pose the greatest risk. Meanwhile, high risk contamination on non-“establishment” properties escapes oversight. The release-based cleanup program does away with the requirement to perform exhaustive investigations of an entire parcel of real property, including, in certain circumstances, having to demonstrate that pollution is not present. But it does impose a clear, consistent standard for cleanup. If a release is discovered, whether it be a new spill or a newly-discovered historical release, it must be remediated to a known standard, identified in regulations adopted by the Department. Reporting requirements and DEEP oversight are focused on (“tiered on”) those releases that pose the highest risk to the environment and human health. The requirement to consider and address environmental contamination is separated from the transfer of real property, removing an impediment to resale.

This approach is used successfully by nearly all other states, including Massachusetts. In fact, the language of the Bills uses the Massachusetts clean-up framework, and adapts existing principles found in Connecticut statutes to fit that framework. The Departments have had

several discussions with stakeholders regarding the transition to a release-based program, and we are grateful for the productive engagement we have had thus far to “fill in the blanks” of the statutory framework for a release-based program. For example, we have listened to stakeholder concerns that the Bills as drafted would sunset the Transfer Act on a date certain whether or not the release-based regulatory framework has been adopted. We appreciate these concerns and would support changes to the legislation that would ensure the Transfer Act does not sunset until implementing regulations for the release-based program are adopted. This and other changes based on these on-going stakeholder discussions will provide greater detail and clarification around the release-based program.

We applaud the Committees for raising these bills, which represent a generational opportunity to improve Connecticut’s environmental quality and economic competitiveness by simplifying the Transfer Act, and authorizing the transition to a release-based cleanup statutory framework. We would welcome the opportunity to work with the committees to continue to refine the Bills, and we are committed to continue to work in an open and collaborative fashion with all stakeholders on the broader regulatory effort that would follow enactment of this legislation.

Thank you for the opportunity to present testimony on these proposals. If you have any questions, please do not hesitate to contact Mandi Careathers, DEEP’s legislative liaison, at [Mandi.Careathers@ct.gov](mailto:Mandi.Careathers@ct.gov) or Tommy Hyde, DECD’s legislative liaison, at [Tommy.Hyde@ct.gov](mailto:Tommy.Hyde@ct.gov).